

**Award No. 1366**

**Docket No. MW-1364**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**BUTTE, ANACONDA & PACIFIC RAILWAY COMPANY**

**STATEMENT OF CLAIM:** "Claim of R. Lorello and W. M. Franklin, section laborers, that they be paid at the rate of time and one-half for services performed during overtime hours. In the case of R. Lorello from January 28th to February 3rd, 1940, inclusive, and in the case of W. M. Franklin from January 31st to February 3rd, 1940, inclusive."

**EMPLOYEES' STATEMENT OF FACTS:** "Effective January 28th, 1940, Section Laborer R. Lorello, formerly assigned on Section 4, at Gregson, was instructed to work nights at East Anaconda, in connection with a temporary emergency, his assigned hours being from 8:00 P. M. until 4:00 A. M.

"A few days later it developed that the emergency requiring the work of R. Lorello required continuous attention throughout the night, and so on January 31, 1940, Section Laborer W. M. Franklin assigned at Section 2, Rocker, was instructed to go to East Anaconda in connection with the same emergency work, the hours of service being rearranged and R. Lorello was assigned from 3:00 P. M. to 11:00 P. M., and W. M. Franklin from 11:00 P. M. to 7:00 A. M."

**POSITION OF EMPLOYES:** "On account of extremely cold weather during the latter part of January and early part of February, 1940, the Carrier found it necessary to temporarily work section laborers nights at East Anaconda, to guard against track being overflowed with water running from smelter buildings and freezing, thus blocking the track. As stated in Employees' Statement of Facts, Section Laborers R. Lorello and W. M. Franklin, were assigned to this temporary emergency service.

"Rule 7 of agreement in effect between the Carrier and the Brotherhood reads:

'Rule 7. (a) Except for employees mentioned in Rule 18 (e), the starting time of the work period for regular assigned service will be designated by the supervisory officer and will not be changed without first giving employees affected thirty-six hours' notice. Starting time shall be between hours of 6:00 and 8:00 A. M.

(b) Employees time will start and end at regular assembling points for each class of employees.'

As will be observed, this rule specifically provides that the regular starting time shall be between the hours of 6:00 and 8:00 A. M. The two employees involved in this claim were required to start work—one of them at 3:00 P. M. and the other at 11:00 P. M. Thus their services were performed during overtime hours and accordingly they are entitled to pay under the provisions of Agreement Rule 4, reading:

employed on January 31st to fill a temporary assignment as Track Watchman on Section No. 8 at East Anaconda and his assignment was from 11:00 P. M. to 7:00 A. M. for the duration of the job. He filled this assignment from January 31st to February 3rd, 1940.

"These Track Watchmen were required to protect our operation during the period that a water flume and tank in the vicinity of the Anaconda Copper Mining Company concentrator was freezing and overflowing, filling our cut ditches with ice and debris and occasionally flooding a short section of our track. At the time these track watchmen were assigned, we did not know whether the condition requiring their services would continue for one day or one month. Between the hours of 7:00 A. M. and 3:00 P. M. our operations were protected by the section crew.

"Rule No. 7 of our agreement with the Brotherhood of Maintenance of Way Employees reads:

'Except for employees mentioned in Rule 18 (e), the starting time of the work period for regular assigned service will be designated by the supervisory officer and will not be changed without first giving employees affected thirty-six hours' notice. Starting time shall be between hours of 6:00 A. M. and 8:00 A. M.'

"Rule 18 (e) reads:

'The general rule of promotion and seniority will not apply to positions of track, bridge, tunnel, highway crossing watchmen, etc.'

"Hence, it is our contention that the starting time, as quoted in rule No. 7, is not applicable. Employees' representatives insist upon referring to these men as Section Laborers, regardless of the fact that they were employed and working as Track Watchmen during the period mentioned. They did hold seniority rights as Section Laborers, but during this particular period, were laid off account reduced section forces. As a matter of fact, their seniority as Section Laborers did not entitle them to the position of Track Watchmen.

"As will be noted, Rule No. 18-E, provides that the general rule of promotion and seniority does not apply when filling such positions.

"In this instance, Lorello and Franklin accepted the assignment after knowing it would be only a temporary position and were advised what the hours of assignment would be, etc."

**OPINION OF BOARD:** It appears from the record that the two section laborers, claimants in this case, were taken from the sections of their previous assignments, Sections 2 and 4 respectively, to protect the railroad's operations account of flooded track and ditches on Section 8. The question presented is whether or not the services thus required constituted watchmen's services as designated by the carrier or services as track laborers as contended by the employees.

It is the view of this Board that under the circumstances as shown by the record in this case, the services provided by these two claimants were those of section laborers.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That under the circumstances as shown by the record in this case the services provided by these two claimants were those of section laborers.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 18th day of February, 1941.